

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Ray H. Smith, Jr.,	:	
	:	
Plaintiff,	:	Civil Action 2:06-cv-568
	:	
v.	:	Judge Sargus
	:	
Terry Collins, <i>et al.</i> ,	:	Magistrate Judge Abel
	:	
Defendants.	:	

**ORDER**

Plaintiff Ray H. Smith, Jr., a State prisoner, brings this action under 42 U.S.C. § 1983 alleging that Defendants retaliated against him for filing a prisoner grievance. This matter is before the Magistrate Judge on Plaintiff's September 11, 2006 motion for default judgment. (Doc.9).

Pursuant to the Magistrate Judge's Order of July 18, 2006, Defendants had 45 days from the date of service of the complaint in order to file their responses. It is Plaintiff's contention that this 45 day period began to run on July 18, 2006, the date of filing of the complaint. However, Plaintiff is mistaken. According to the Order, the 45 day period did not begin to run until the complaint was *served* upon the opposing party.

Here, Defendants Terry Collins and Gregory Osborne were not served until July 27, 2006, while Defendants Alicia Stoney and Ernie Moore were served on July 26, 2006. Thus, the 45 day period at issue in this case began to run on July 26, 2006, and was up

on September 9, 2006. However, this date fell on a Saturday, and pursuant to Fed. R. Civ. P. 6(a), if a due date falls on a Saturday, Sunday, or government holiday, the period for filing automatically extends until the next day which is not one of the aforementioned days. Thus, Defendants' responses were not due until September 11, 2006. Defendants filed their answer on September 11, 2006 (doc. 8), and so Plaintiff is not entitled to default judgment on basis of Defendants' failure to appear.

For the reasons stated above, The Magistrate Judge RECOMMENDS that Plaintiff's September 11, 2006 motion for default judgment (doc.9), be DENIED.

s/Mark R. Abel  
United States Magistrate Judge